

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 20-1744-CFC-EGT
)	
WALMART INC. AND WAL-MART)	
STORES EAST, LP,)	
)	
Defendants.)	

MOTION FOR HEARING TO RESOLVE DISCOVERY DISPUTE

Defendants Walmart Inc. and Wal-Mart Stores East, LP (collectively, “Walmart”) respectfully move this Court to schedule a hearing to address the outstanding discovery dispute regarding the following matters:

1. Whether the U.S. Department of Health and Human Services (“HHS”), the Centers for Medicare and Medicaid Services (“CMS”), the Indian Health Service (“IHS”), the U.S. Department of Veterans Affairs (“VA”), the U.S. Department of Defense (“DoD”), and the Federal Bureau of Investigation (“FBI”) (collectively, the “Agencies”) may object to the Subpoenas on the basis of the Agencies’ *Touhy* regulations set forth in 45 C.F.R. Part 2 (HHS, CMS, and IHS), 38 C.F.R. §§ 14.800–14.810 (VA), 32 C.F.R. Part 97 (DoD), and 28 C.F.R. § 16.22 (FBI). In light of the delays caused by the government’s invoking of *Touhy* and additional developments, whether the Court should administer discovery over these agencies through Rule 34 instead of Rule 45.
2. Whether the Agencies have waived all objections to Walmart’s Rule 45 Subpoenas (the “Subpoenas”) by failing to timely or properly respond.

The attorneys listed below participated in a verbal meet-and-confer (by telephone) on the following dates: December 18, 2024 (60 minutes), December 19, 2024 (30 minutes), and January 21 (30 minutes).

Agencies' Counsel:
Vinita Andrapalliyal

United States' Counsel
Katherine Ho (January 21 only)
Katherine Brunson (January 21 only)

Defendants' Counsel:
Delaware Counsel: Kelly Farnan

Lead Counsel: Jason Varnado, Billy Laxton (January 21 only), Laura Jane Durfee, James Carlson (December 18 and January 21 only), Kelsey Bryan (December 19 and January 21 only), and Andrew Junker (December 18 only)

The parties are available for a hearing on the following dates: February 20, 24, or 26. Walmart respectfully requests that the discovery hearing be conducted in person. We have conferred with the United States and can advise it neither joins nor opposes Walmart's request for an in-person hearing. Walmart suggests the hearing could be scheduled on or around the same date and time as the issues raised in the Motion for Discovery Conference filed by Walmart today and the issue raised in a forthcoming Motion for Discovery Conference to be filed by the United States.

The parties request permission to submit one 3-page letter in 12 point font per side.

This dispute is the third time a discovery or protective order dispute has been brought before the Court and the second time a dispute has been brought before the Court related to discovery from the Agencies.

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Dated: January 31, 2025

/s/ Kelly E. Farnan

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